Supreme Court, U.S.
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No. 00-1350

In The

Supreme Court of the United States

MEREDITH T. RANEY, JR.,

Petitioner,

v.

CITY OF MELBOURNE, FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF RESPONDENT

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QUESTION PRESENTED (RESTATED)

I. WHETHER THE DISTRICT COURT AND CIRCUIT COURT OF APPEALS PROPERLY FOUND THAT PLAINTIFF RANEY WAS NOT ENTITLED TO THE PROTECTIONS PROVIDED BY THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT.

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PRELIMINARY STATEMENT

In this Brief, the Respondent City of Melbourne, Florida will also be referred to as Defendant as it stood below, or as the City. Petitioner Meredith T. Raney, Jr. will also be referred to as the Plaintiff, as below.

STATEMENT OF THE CASE

Since the Order at issue is a final dismissal of Plaintiff's Complaint, the District Court stated in its Order that it was, " . . . **accepting the allegations in the Complaint as true and construing those allegations in the light most favorable to Plaintiff . . .** ". In pertinent part, U.S. District Judge Patricia Fawsett dismissed Plaintiff's Complaint because it was brought under the provisions of the Freedom of Access to Clinic Entrances Act. 18 U.S.C. § 248. The District Judge found that:

> **"Here, even accepting the allegations in the Complaint as true and construing those allegations in the light most favorable to Plaintiff, it would be unreasonable to infer that Raney is or ever was an authorized volunteer or employee of the clinic. He is, at best, a self-proclaimed 'counselor' who 'offers love and help' to passers-by on the sidewalk *outside* a clinic which he desires to enter. (Record reference omitted) Thus Raney is not entitled to the protections provided by FACE, which are properly reserved for the actual patients and personnel of reproductive health service facilities."**

SUMMARY OF ARGUMENT

Plaintiff Raney cannot state a cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"). An action brought under FACE may be brought **" . . . only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services."** 18 U.S.C. § 248(c)(1)(A). The Act defines **"facility"** to include a hospital, clinic, doctor's office, or other facility that provides reproductive health services. 18 U.S.C § 248(e)(1).

In his Complaint, Plaintiff Raney alleged that the Defendant City's police officers wrongfully prevented him from providing reproductive health services on the sidewalk outside the Aware Woman's Clinic in the City. Raney was arrested for violating a judicial injunction, which created a buffer zone around the clinic within which anti-abortion activists were not to enter. The Eleventh Circuit Court previously held, in Plaintiff Raney's separate case brought under FACE against the clinic itself, that

> **"He therefore can claim neither that he was in a facility nor that he was offering the type of reproductive health services to which the FACE Act protects access."** ***Raney v. Aware Woman's Center for Choice, Inc.,*** **224 F. 3d 1266, Case No. 99-14122 (11th Cir. 8/30/2000).**

Given the nearly identical nature of Plaintiff Raney's claims against the City here, also brought under the FACE Act, the Order of dismissal was properly AFFIRMED by the Eleventh Circuit. Mr. Raney's Petition

filed with this Honorable Court should also thus be DENIED.

ARGUMENT

THE DISTRICT COURT AND CIRCUIT COURT PROPERLY FOUND THAT PLAINTIFF RANEY WAS NOT ENTITLED TO THE PROTECTIONS PROVIDED BY THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT.

As borne out by the Eleventh Circuit Court's recent opinion in *Raney v. Aware Woman's Center for Choice,* 224 F. 3d 1266 (11th Cir. 8/30/2000), the Freedom of Access to Clinic Entrances Act was not intended to serve the interests of anti-abortion activists like Mr. Raney. At a minimum, this is now Mr. Raney's third lawsuit stemming from the same incidents in which he was arrested outside the Aware Woman's Clinic in Melbourne for violating the judicial injunction creating a buffer zone around the Clinic. The District Judge and Circuit Court properly found this latest effort by Mr. Raney to sue the City of Melbourne under the FACE Act must also fail. Nothing in Plaintiff Raney's Petition to this Court demonstrates to the contrary. Mr. Raney's Complaint was filed prior to the Circuit Court's opinion in *Raney v. Aware Woman's Center for Choice, Inc., supra.* That Opinion is directly on point, since it concludes with a specific finding why his action against the Clinic itself under FACE must fail:

> **"A FACE Act action may be brought 'only by a person involved in providing or seeking to**

> provide, or obtaining or seeking to obtain, services *in a facility* that provides reproductive health services . . . '. 18 U.S.C. § 248(c)(1)(A), (Emphasis added). The statute defines 'facility' to include 'a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located' (18 U.S.C. § 248(e)(1)). The 'reproductive health services' protected under the statute, must be provided 'in a hospital, clinic, physician's office or other facility . . . ". (18 U.S.C. § 248(e)(5).
>
> "By requiring that the person bringing a FACE action be seeking or providing reproductive health services in a facility, Congress recognized the difference between. trained professionals in work credentialed facilities and unregulated volunteer counselors who are not attached to recognized providers of reproductive health care. On each of the three occasions when Raney was arrested for violating the Madsen Injunction, he was standing on a sidewalk outside of the Woman's Center Clinic. He therefore can claim neither that he was in a facility nor that he was offering the type of reproductive health services to which the FACE Act protects access." *Raney v. Aware Woman's Center, supra,* p. 4-5.

None of the arguments in Plaintiff's Petition to this Court demonstrate any error in District Judge Fawsett's similar conclusion:

> "Because it is clear from a reading of the Complaint and the exhibits attached thereto that Raney is *not* a reproductive health services

provider as defined by FACE, Defendant's Motion to Dismiss will be granted."

The City's arguments for dismissal were in part based upon the District Court's entry of Summary Judgment against Plaintiff Raney in the earlier-filed case he brought under FACE against the Aware Woman's Clinic.

More importantly, the District Court's decision that Plaintiff Raney did not have *standing* to bring this action against the City under the Freedom of Access to Clinic Entrances Act was lawful and appropriate. The Act is clear that a Plaintiff is not a **"reproductive health services provider"** entitled to the FACE protections and remedies unless he or she actually provides such services in a **"facility."** 18 U.S.C. § 248(c)(1)(A). At the very least, a person seeking the protections of FACE must be, **" . . . affiliated with the facility either as an employee or an volunteer."**

The District Court and Circuit Court both properly found in this case that a Plaintiff must be *affiliated* with a clinic before being considered a **"reproductive health services provider"** under FACE. In support, the District Court Order cited both the statute's legislative history and interpreting case law. Simply put, the protections and prohibitions provided in the Act are intended to benefit reproductive health facilities such as the Aware Woman's Center in the City of Melbourne, Florida. That clinic was targeted for disruptive protest activities by anti-abortion activists such as Plaintiff Raney. (See also *United States v. Wilson*, 73 F. 3d 675, 683 (7th Cir. 1995) *cert. den.*, 519 U.S. 806 (1996); *Cheffer v. Reno*, 55 F. 3d 1517, 1520 (11th Cir. 1995).

As District Judge Fawsett properly found at the conclusion of the Court's analysis of FACE:

> **"Likewise, a reading of the FACE that would guarantee such persons access to a 'facility' where they are not welcome would be contrary to the objective of FACE, which is to insure the stability of the national market for reproductive health services." (R1-11-10).**

Ultimately, the District Judge's legal analysis was deemed appropriate by the Circuit Court in its opinion below *and* in *Raney v. Aware Woman's Center for Choice, Inc., supra.* After properly rejecting Plaintiff Raney's conclusory allegation that he is a provider of **"reproductive health services"** as defined by FACE, the District Judge placed Mr. Raney's activities in their proper context:

> **"The term 'sidewalk counselor' is commonly understood to refer to 'pro-life' activists who attempt to persuade actual and prospective abortion clinic clients to choose not to have an abortion. (Citations omitted). This 'counseling' occurs on the sidewalks and public areas near abortion clinics. (Citation omitted). FACE does not ban 'sidewalk counseling' outright, but neither does it protect 'sidewalk counseling' as a 'reproductive health service', because sidewalk counselors do not provide their services 'in a facility' as defined by FACE." (R1-11-14, 15).**

The District Judge thus concluded that, even construing Plaintiff Raney's allegations in the light most favorable to him, the Court cannot infer that Raney was an authorized employee or volunteer for the Aware

Woman's Clinic. He was thus not entitled to the protections provided by FACE, which were intended and reserved by Congress for the actual patients and employees of these clinics.

Thus Plaintiff Raney's attempt to sue the City of Melbourne, Florida under FACE for the lawful actions of its police officers in arresting him for violating the buffer zone judicially enacted around the Clinic was properly dismissed. Plaintiff Raney's varied and somewhat bizarre arguments in his appeal to the Circuit Court and Petition to this Court fail to demonstrate to the contrary. There was no evidence whatsoever in support of Plaintiff's final argument that the U.S. District Judge was biased or prejudiced in any manner. The District Court's Order on Appeal and the Eleventh Circuit Court's Opinion affirming same should both be AFFIRMED, and Plaintiff Raney's Petition to this Court *DENIED*.

CONCLUSION

For all the reasons stated herein or to be gleaned from a review of the pleadings and other documents in the Appendix to the Petition, the Defendant/Respondent City of Melbourne, Florida respectfully submits the Order of Dismissal entered by U.S. District Judge Patricia Fawsett, as AFFIRMED by the Eleventh Circuit Court of

Appeals, was proper under the law and facts. Mr. Raney's Petition should therefore be DENIED.

Respectfully submitted,

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